



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2017-0758; FRL-9993-73-Region 4]**

#### **Air Plan Approval; Kentucky: Jefferson County Definitions and Federally Enforceable District Origin Operating Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted under cover letters dated December 21, 2016, and August 25, 2017, by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet). The proposed SIP revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (LMAPCD or District) and make amendments to Jefferson County's regulations regarding definitions and the federally enforceable district origin operating permit (FEDOOP) program. EPA is proposing to approve the revisions modifying these regulations pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0758 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information

you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at 404-562-9089 or via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. What Action is EPA Proposing?**

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through letters dated December 21, 2016 and August 25, 2017.<sup>1,2</sup> Both submittals make changes to Regulation 1.02, - “Definitions,” to incorporate various new definitions and revise existing definitions. The August 25, 2017, submittal also makes changes

---

<sup>1</sup> EPA notes that the Agency received the SIP revision dated August 25, 2017 on August 29, 2017.

<sup>2</sup> In 2003, the City of Louisville and Jefferson County governments merged and the “Jefferson County Air Pollution Control District” was renamed the “Louisville Metro Air Pollution Control District.” However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading “Air Pollution Control District of Jefferson County.” Thus, to be consistent with the terminology used in the SIP, we refer throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the “Jefferson County” regulations.

to Regulation 2.17, - “Federally Enforceable District Origin Operating Permits [FEDOOP],” to make clarifying and administrative edits to this portion of the minor source operating permit program. The changes addressed in this proposed rulemaking also correct typographical errors, make minor administrative and clarifying edits, and recodify sections of the existing rules. In this action, EPA is proposing to approve these SIP revisions that make changes to Jefferson County’s definitions and FEDOOP regulations because they are consistent with the CAA.

At this time, EPA is not acting on the following changes included under the same August 25, 2017, cover letter: Regulation 2.02, - “Air Pollution Regulation Requirements and Exemptions”; and Regulation 2.03 - “Permit Requirements—Non-Title V Construction and Operating Permits and Demolition/Renovation Permits,” renamed as “Authorization to Construct or Operate; Demolition/Renovation Notices and Permit Requirements.” EPA will address these changes to the Jefferson County regulations governing minor source operating and construction permitting and major source permitting in a separate action. EPA took final action to approve the changes to Regulation 2.05, - “Prevention of Significant Deterioration of Air Quality,” included under the same cover letter, on April 10, 2019 (84 FR 14268). The changes to Regulation 3.01, - “Ambient Air Quality Standards,” included under the same cover letter, were approved on May 11, 2018 (83 FR 21907).

## **II. Analysis of State’s Submittals**

### **A. Regulation 1.02, - “Definitions”**

#### **1. August 25, 2017: Regulation 1.02, Version 13**

This SIP revision includes several changes to the definitions as follows: 1) adds a definition for “administrative permit revision”; 2) adds a definition for “emissions unit” or

“facility”; 3) adds a definition for “insignificant activity”; 4) adds a definition for “minor permit revision”; 5) adds a definition for “minor source”; 6) adds a definition for “regulated air pollutant”; 7) adds a definition for “responsible official”; 8) adds a definition for “significant permit revision”; 9) adds a definition for “trivial activities”; 10) adds a definition for “twelve month rolling period” or “12-month rolling period”; and 11) makes other clarifying and administrative edits to definitions throughout the Section, including renumbering. Several of these definitions are discussed in further detail below.

The definitions of “administrative permit revision,” “minor permit revision,” and “significant permit revision” included in Regulation 1.02 generally mirror the federal provisions for “administrative permit amendments,” “minor permit modification procedures,” and “significant modification procedures” at 40 CFR 70.7(d)(1), 70.7(e)(2)(i)(A), and 70.7(e)(4)(i), respectively, which are part of the title V permitting program for major operating permits.<sup>3</sup> The District’s added terms are used in SIP-approved Regulation 2.07, - “Public Notification for Title V, PSD, and Offset Permits; SIP Revisions; and Use of Emission Reduction Credits,” which sets forth permitting public participation procedures. EPA notes that these public participation procedures are consistent with applicable Federal requirements.

The August 25, 2017, submittal also adds the definitions for “insignificant activities” and “trivial activities.” Specifically, the submittal adds to Regulation 1.02 the definition of “insignificant activities” to list activities already exempted from permitting requirements under the current, SIP-approved version of Regulation 2.02, and to make that definition consistent with the District’s definitions for its title V permitting program at Regulation 2.16 - “Title V

---

<sup>3</sup> LMAPCD has equivalent definitions in its non-SIP Regulation 2.16, - “Title V Operating Permits,” which governs the title V (part 70) operating permit program for major sources.

Operating Permits.” The full list of insignificant activities is included for SIP approval as Appendix A to Regulation 1.02. The submittal also adds the definition of “trivial activities” to provide the District with authority to maintain a list of inconsequential activities.<sup>4</sup> As discussed in greater detail in Section II.B below, the effect of these revisions—in conjunction with proposed revisions to Regulation 2.17—is to require that an applicant for a FEDOOP must identify all insignificant activities in its permit application, but to exempt trivial activities from the application requirements.<sup>5</sup> EPA believes these changes will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the Act), or any other applicable requirement.

The August 25, 2017, SIP revision also adds a definition for “minor source” at Regulation 1.02, Section 1.44. Under that definition, minor sources are those sources that are subject to neither Regulation 2.16 (for the title V program), nor Regulation 2.17 (for the FEDOOP program), meaning the sources do not have potential to emit (PTE) above the major source thresholds for criteria air pollutants and their precursors nor hazardous air pollutants. This is considered a “true” minor source, whereas minor sources that would have a PTE above major source thresholds except for some federally enforceable limit, such as those sources subject to Regulation 2.17, are generally referred to as “synthetic minor sources.”

The August 25, 2017, submittal also adds a definition for “regulated air pollutant” at Regulation 1.02, Section 1.69, which mirrors the federal definition for the title V program at 40

---

<sup>4</sup> The District’s current list of “trivial activities” is available at [https://louisvilleky.gov/sites/default/files/air\\_pollution\\_control\\_district/documents/forms/trivial.pdf](https://louisvilleky.gov/sites/default/files/air_pollution_control_district/documents/forms/trivial.pdf), and is included in the docket for this action.

<sup>5</sup> EPA notes that the terms “insignificant activities” and “trivial activities” are also referenced in proposed revisions to Regulations 2.02 and 2.03, which are also included in the August 21, 2017, submittal. As explained above, EPA will act on those changes in a separate action.

CFR 70.2, as included in Jefferson County's EPA-approved title V program at Regulation 2.16. The definition included at Regulation 1.02 describes which pollutants are regulated by the Act. This definition is also largely consistent with the definition of "regulated NSR pollutant" in EPA's major source permitting regulations, but is not meant to satisfy the same purpose.<sup>6</sup>

Under the current federally-approved SIP, the definition for "regulated air pollutant" is not referenced in any other regulation. However, in its August 25, 2017, submittal, the District requests that EPA incorporate a revision to Regulation 2.03 that would reference the definition of "regulated air pollutant" for purposes of determining whether a source qualifies for a combined construction and operation permit. As explained above, EPA will act on changes to Regulation 2.03 in a later action and will analyze the definition of "regulated air pollutant" as it applies to Regulation 2.03 at that time.

The submittal also revises the definition for "construction" to exclude the term "modification." This change is made because the term "modification" is defined elsewhere in Regulation 1.02 and appears redundant in the definition of "construction." Moreover, because the District's regulations otherwise prohibit both the construction and modification of an affected facility without a permit, EPA does not believe that this change will impact the implementation of the District's minor NSR program.<sup>7</sup>

---

<sup>6</sup> EPA has proposed to approve the definition of "regulated NSR pollutant," as incorporated by reference in Regulation 2.05, as of February 1, 2019. *See* 84 FR 1016.

<sup>7</sup> The Jefferson County regulations includes separate definitions of "construction" applicable to major sources. First, the regulations include a definition at Regulation 2.04, - "Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emission Offset Requirements)" that is consistent with the federal definition at 40 CFR 51.165(a)(1)(xviii). Additionally, the District incorporates by reference the federal definition of "construction," codified at 40 CFR 52.21(b)(8), at Regulation 2.05, - "Prevention of Significant Deterioration of Air Quality" for major NSR permitting.

LMAPCD also adds a definition for “emissions unit” or “facility” and “responsible official.” These terms are consistent with EPA’s definitions for the title V program at 40 CFR 70.2 for “emissions unit” and “responsible official,” respectively. Finally, there are several administrative edits made to definitions throughout Regulation 1.02 to renumber existing definitions, correct typographical errors, and make formatting changes. EPA preliminarily finds that the changes to Regulation 1.02, as discussed herein, are consistent with the CAA.

2. December 21, 2016 submittal: Regulation 1.02, Version 14

The December 21, 2016, submittal transmits Regulation 1.02, version 14 to EPA for approval.<sup>8</sup> The only changes made to Regulation 1.02 in this submittal are to incorporate changes to the definition of volatile organic compounds (VOC), and to make other administrative edits to definitions throughout the Section. Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NO<sub>x</sub>) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments implement rules to limit the amount of certain VOC and NO<sub>x</sub> that can be released into the atmosphere. VOC have different levels of reactivity; they do not react at the same speed or do not form ozone to the same extent. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of “VOC,” and hence what compounds shall be treated as VOC for regulatory purposes.

---

<sup>8</sup> The December 21, 2016, SIP revision includes version 14 of Regulation 1.02, but was submitted before version 13 was submitted. Regulation 1.02, version 13 was submitted on August 25, 2017. The December 21, 2016, submittal includes two separate redline/strikeout documents for Regulation 1.02. The first document, beginning on page 13 of the pdf submittal, shows all changes made in versions 11, 12, 13, and 14 of that rule. The second document, beginning on page 27 of the pdf submittal, shows only those changes made in version 14. EPA previously approved versions 11 and 12. *See* 81 FR 87815 (December 6, 2016); 82 FR 35101 (July 28, 2017). Accordingly, we are only proposing to approve changes included in versions 13 and 14 of Regulation 1.02—as submitted on August 25, 2017, and December 21, 2016, respectively—in this action.

EPA determines whether a given carbon compound has “negligible” reactivity by comparing the compound's reactivity to the reactivity of ethane. It has been EPA's policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone and should be excluded from the regulatory definition of VOC. *See* 42 FR 35314 (July 8, 1977), 70 FR 54046 (September 13, 2005). EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called “negligibly reactive.” EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

On November 29, 2004 (69 FR 69298), and August 1, 2016 (81 FR 50330), EPA issued final rules revising the definition of VOC by adding new compounds, t-Butyl acetate and 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also denoted as HFE-347pcf2), to the list of those considered to be negligibly reactive compounds. Subsequently, on February 25, 2016 (81 FR 9339), EPA issued a final rule removing recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate. LMAPCD's SIP-approved definition currently includes t-butyl acetate as a compound exempted from the definition of VOC. The December 21, 2016, SIP revision removes the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate, consistent with EPA's February 25, 2016, final rule (81 FR 9339). The December 21, 2016, SIP revision also adds 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane, also known as HFE-347pcf2, to the list of negligibly reactive compounds to be consistent with federal regulations. These compounds are excluded from the VOC definition on the basis that they make a negligible contribution to tropospheric ozone formation.



Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Jefferson County's addition of exemptions from the definition of VOCs, and the removal of recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate are approvable under section 110(l) because they reflect changes to federal regulations based on findings that: the exempted compounds are negligibly reactive; for t-Butyl acetate, that there was no evidence it was being used at levels that cause concern for ozone formation; and, the data that had been collected under the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements had proven to be of limited utility in judging its cumulative impact. For further details and justification, see EPA's February 25, 2016 and August 1, 2016, rulemakings and the docket information supporting those prior actions.

*B. Regulation 2.17, - "Federally Enforceable District Origin Operating Permit (FEDOOP) Program"*

The August 25, 2017, submittal makes several changes to Regulation 2.17, - "Federally Enforceable District Origin Operating Permits." This program is intended to regulate the issuance of non-title V permits that include a federally enforceable permit condition, limit, or provision. This is generally used for sources which would otherwise trigger major source requirements, especially for title V purposes, except for the voluntary application of federally enforceable conditions that place limitations on emissions, materials, or production rates such that the PTE is held below major source applicability. The most significant changes included in the August 25, 2017, submittal are to include provisions for Section 4, - "Permit Applications,"

to describe the required content of FEDOOP applications, including the treatment of “insignificant activities” and “trivial activities.”

As noted in Section II.A of this proposed rulemaking, the District’s August 25, 2017, revision to Regulation 1.02 includes the addition of definitions for “insignificant activities” and “trivial activities,” as well as an Appendix listing applicable insignificant activities. Here, the District also requests a change to its FEDOOP rule at Regulation 2.17, Section 4.2, which requires permit applicants to include insignificant activities in the FEDOOP application. Section 4.2 also allows the applicant to exclude information that is not needed to determine: which applicable requirements apply; whether the activity complies with applicable requirements; and, whether the stationary source is major. However, the applicant must include information related to any applicable restriction on the size of production rate of the affected facility. In addition to the requirements related to insignificant activities, the District also adds Section 4.3, which allows a permit applicant to omit trivial activities from the application.

EPA notes that the District’s proposed changes at Regulation 2.17, Section 4—as applicable to sources subject to FEDOOP requirements—are consistent with EPA’s permit application requirements for title V sources. *See* 40 CFR 70.5(c). Specifically, as is the case under Regulation 2.17, Section 4.2, 40 CFR 70.5(c) allows for the omission of insignificant activities from a permit application, but still requires inclusion of information related to an exemption for size or production rate, as well as information needed to determine the applicability of any applicable requirement. In addition, EPA believes the inclusion of insignificant activities in the FEDOOP permit process is SIP-strengthening, and that the

exclusion of trivial activities will not impact implementation of the FEDOOP program. For these reasons, EPA is proposing to approve these changes.

The August 25, 2017, submittal also includes a change at Regulation 2.17, Section 3.8 to include a 5-year term for which FEDOOPs remain in effect. This time period is a clarifying amendment to inform the public and facilities that FEDOOPs must be renewed every 5 years. This time period is consistent with the federal title V permitting program. Additionally, the addition of Section 3.8 includes a reference to Section 6.2, which describes the permit shield, meaning that as long as an administratively complete permit application has been received for issuance or renewal, then the failure to have a permit is not a violation of the rules until such a time that LMAPCD takes final action on the permit application. This shield provision is not being modified in this submittal, but the reference to it in Section 3.8 is appropriate to acknowledge what permit terms and conditions remain in effect while a permit renewal is being processed. The other changes to Regulation 2.17 are ministerial in nature.

### **III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Jefferson County's Regulation 1.02, - "Definitions," version 14, state effective September 21, 2016,<sup>9</sup> which makes various changes to applicable definitions, and Regulation 2.17, - "Federally Enforceable District Origin Operating Permits,"

---

<sup>9</sup> The District approved version 13 of Regulation 1.02 on July 2, 2013, and version 14 on September 21, 2016. The State forwarded the regulations to EPA in the opposite order. Version 14 became state effective on September 21, 2016, and version 13 became state effective on February 15, 2017. Although the most recent State approval adopts version 13, EPA understands the State's intent is to incorporate version 14 of the regulation into the SIP. For that reason, EPA is proposing to incorporate by reference Regulation 1.02 as of version 14's state-effective date, September 21, 2016. EPA may include an explanation describing this situation in 40 CFR 52.920(c), Table 2 if the Agency finalizes the changes proposed in this action.

version 4, February 15, 2017, which adds provisions describing permit application content for these types of permits. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### **IV. Proposed Action**

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through two letters dated December 21, 2016, and August 25, 2017, to change applicable definitions and provisions for the FEDOOP program. These changes are consistent with the CAA.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;

- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 6, 2019.

Mary S. Walker,  
Acting Regional Administrator,  
Region 4.

[FR Doc. 2019-10344 Filed: 5/17/2019 8:45 am; Publication Date: 5/20/2019]